

THE HONORABLE RICHARD A. JONES

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NORTHWEST IMMIGRANT RIGHTS  
PROJECT (“NWIRP”), a nonprofit  
Washington public benefit corporation; and  
YUK MAN MAGGIE CHENG, an  
individual,

Plaintiffs,

v.

JEFFERSON B. SESSIONS III, in his  
official capacity as Attorney General of the  
United States; UNITED STATES  
DEPARTMENT OF JUSTICE;  
EXECUTIVE OFFICE FOR  
IMMIGRATION REVIEW; JUAN  
OSUNA, in his official capacity as Director  
of the Executive Office for Immigration  
Review; and JENNIFER BARNES, in her  
official capacity as Disciplinary Counsel for  
the Executive Office for Immigration  
Review,

Defendants.

No. 2:17-cv-00716

ORDER

This matter comes before the Court on Plaintiffs Northwest Immigrant Rights  
Project (“NWIRP”) and Yuk Man Maggie Cheng’s Motion for a Temporary Restraining  
Order (“TRO”).<sup>1</sup> Dkt. # 2. The Government opposes the motion.<sup>2</sup> Dkt. # 14. The

<sup>1</sup> The Court refers to the Plaintiffs collectively as “NWIRP” or “Plaintiffs.”

<sup>2</sup> The Court refers to the Defendants collectively as “EOIR” or “the Government.”

1 Court heard oral argument on May 17, 2017. For the reasons stated below, the Court  
2 GRANTS the motion and enters a TRO with terms as stated at the conclusion of this  
3 order.

#### 4 **I. BACKGROUND**

5 Washington nonprofit Northwest Immigrant Rights Project (“NWIRP”) provides  
6 free and low-cost legal services to thousands of immigrants each year. Dkt. # 1. The  
7 Executive Office for Immigration Review (“EOIR”), an office within the Department of  
8 Justice (“DOJ”), oversees the adjudication of immigration cases. *Id.* at ¶ 1.5. In  
9 seeking to improve immigrants’ access to legal information and counseling, EOIR  
10 provides an electronic list of pro bono legal services providers. With regard to  
11 Washington, EOIR’s entire list of recognized pro bono organizations includes one  
12 group—the NWIRP. Dkt. ## 2 at 17, 3 (Warden-Hertz Decl.) at ¶ 4.

13 In December 2008, EOIR published new rules regulating the professional  
14 conduct of attorneys who appear in immigration proceedings. Specifically, EOIR  
15 reserved the right to “impose disciplinary sanctions against any practitioner who . . .  
16 [f]ails to submit a signed and completed Notice of Entry of Appearance as Attorney or  
17 Representative . . . when the practitioner has engaged in practice or preparation as those  
18 terms are defined in §§ 1001.1(i) and (k) . . . .” 8 C.F.R. § 1003.102(t). The purpose of  
19 these amendments was to protect individuals in immigration proceedings by disciplining  
20 attorneys when it is within “the public interest; namely, when a practitioner has engaged  
21 in criminal, unethical, or unprofessional conduct or frivolous behavior.” Professional  
22 Conduct for Practitioners—Rules and Procedures, and Representation and Appearances,  
23 73 Fed. Reg. 76914-01, at \*76915 (Dec. 18, 2008). With these new rules, EOIR sought  
24 “to preserve the fairness and integrity of immigration proceedings, and increase the  
25 level of protection afforded to aliens in those proceedings . . . .” *Id.*

26 NWIRP recognizes the importance of attorney accountability, especially in the  
27 immigration context. Indeed, NWIRP became an ally to EOIR in its efforts to combat

1 “notario fraud.” Dkt. # 1 (Complaint) at ¶ 3.12. However, NWIRP also recognizes that  
2 section 1003.102(t) has harmful consequences because NWIRP does not have the  
3 resources to undertake full representation of each potential client. *Id.* at ¶¶ 3.5, 3.21-  
4 3.23. Accordingly, NWIRP alleges that it “met with the local immigration court  
5 administrator to discuss” the rule’s impact and “agreed that it would notify the court  
6 when it assisted with any pro se motion or brief by including a subscript or other clear  
7 indication in the document that NWIRP had prepared or assisted in preparing the  
8 motion or application.” *Id.* at ¶ 3.11.

9 Nearly nine years after promulgating the rule, EOIR sent a cease and desist letter  
10 to NWIRP asking the nonprofit to stop “representing aliens unless and until the  
11 appropriate Notice of Entry of Appearance form is filed with each client that NWIRP  
12 represents.” *Id.* at ¶ 3.14. EOIR’s letter acknowledged that the disputed forms on  
13 which NWIRP assisted “contained a notation that NWIRP assisted in the preparation of  
14 the *pro se* motion.” Dkt. # 1-1.

15 NWIRP filed suit against EOIR, among others, seeking injunctive relief from the  
16 enforcement of section 1003.102(t). *See, generally*, Dkt. # 1 (Complaint). In moving  
17 for a temporary restraining order, NWIRP seeks to maintain the status quo until the  
18 parties can be heard on a motion for preliminary injunction. Dkt. # 21; *see also Granny*  
19 *Goose Foods, Inc. v. Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda*  
20 *Cty*, 415 U.S. 423, 439 (1974). EOIR responds by denying that it has violated any  
21 constitutional rights by promulgating and enforcing its own rules. *See, generally*, Dkt. #  
22 14. EOIR opposes the issuance of any injunctive relief. *Id.*

## 23 II. LEGAL STANDARD

24 To obtain preliminary injunctive relief, NWIRP must “establish that [it] is likely  
25 to succeed on the merits, that [it] is likely to suffer irreparable harm in the absence of  
26 preliminary relief, that the balance of equities tips in [its] favor, and that an injunction is  
27 in the public interest.” *Winter v. Natural Resources Defense Council, Inc.*, 55 U.S. 7,

20 (2008). The standard for a temporary restraining order is substantially the same. *Stuhlbarg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 839 n.7 (9th Cir. 2001) (noting that preliminary injunction and temporary restraining order standards are “substantially identical”).

The Ninth Circuit employs a “sliding scale” approach to preliminary injunctions, according to which the four elements are balanced, “so that a stronger showing of one element may offset a weaker showing of another.” *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011). Within this “sliding scale” approach lays the “serious question” test: “a preliminary injunction could issue where the likelihood of success is such that ‘serious questions going to the merits were raised and the balance of hardships tips sharply in [plaintiff’s] favor.’” *Id.* at 1131 (citations omitted). However, to succeed under the “serious question” test, a plaintiff must show that it is likely to suffer irreparable harm and an injunction is in the public interest. *Id.* at 1132.

Regardless of the test used, the burden is on the moving party to show that such extraordinary relief is warranted. *Winter*, 555 U.S. at 22.

### III. DISCUSSION

The Court finds that NWIRP has satisfied the standards described above—both those outlined in *Winter* and in the “serious question” test—and this Court should issue a TRO. NWIRP has shown that it is likely to succeed on the claims that entitle it to relief; NWIRP has already suffered and is likely to continue suffering irreparable harm in the absence of temporary injunctive relief; the balance of the equities tips in NWIRP’s favor; and granting this TRO is in the public interest. Alternatively, NWIRP has at least presented serious questions that go to the merits of its claims, and, as the Court previously noted, NWIRP satisfies the remaining *Winter* elements.

The Court finds that NWIRP met its burden to show that it is immediately and irreparably harmed, and will continue to be so harmed, as a result of EOIR’s enforcement of 8 C.F.R. § 1003.102(t) against NWIRP attorneys. NWIRP’s

1 constitutional rights are violated by EOIR's potentially targeted enforcement of section  
2 1003.102(t). These harms are significant and ongoing, and the Court therefore finds  
3 that entering this TRO against the Government is necessary to maintain the status quo  
4 until such time as the Court may hear and decide the matter of a preliminary injunction.

#### 5 **IV. TEMPORARY RESTRAINING ORDER**

6 1. Plaintiffs' Motion for a Temporary Restraining Order (Dkt. # 2) is  
7 GRANTED.

8 2. Defendants Jefferson B. Sessions III, the United States Department of  
9 Justice, the Executive Office for Immigration Review, Juan Osuna, and Jennifer Barnes,  
10 and all of their officers, agents, servants, employees, attorneys, successors, assigns, and  
11 persons acting in concert or participation with them are hereby ENJOINED and  
12 RESTRAINED from

13 (a) Enforcing the cease-and-desist letter, dated April 5, 2017, from Defendant  
14 Barnes and EOIR's Office of General Counsel to NWIRP; and

15 (b) Enforcing or threatening to enforce 8 C.F.R. § 1003.102(t) against  
16 Plaintiffs and all other attorneys under their supervision or control, or who  
17 are otherwise associated with them.

18 3. Counsel for the Government represented during the hearing on the TRO  
19 that it desired to continue issuing cease and desist letters to non-profit organizations  
20 providing legal services to immigrants. As such, the Court grants this TRO on a  
21 nationwide basis. Therefore, the Court prohibits the enforcement of 8 C.F.R. §  
22 1003.102(t) during the pendency of this TRO on a nationwide basis.

23 4. No security bond is required under Federal Rule of Civil Procedure 65(c).

24 5. The parties shall, within 2 days of this Order, propose a briefing schedule  
25 and noting date with respect to Plaintiffs' forthcoming motion for a preliminary  
26 injunction. At that time, the Court may schedule a hearing on Plaintiffs' motion for a  
27 preliminary injunction, if necessary, following receipt of the parties' briefing.

1           6.       This temporary restraining order shall remain in effect until the Court  
2 rules on Plaintiffs' motion for a preliminary injunction.

3           **V.       CONCLUSION**

4           For the foregoing reasons, the Court GRANTS Plaintiffs' Motion for a  
5 Temporary Restraining Order. Dkt. # 2.

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7           Dated this 17th day of May, 2017.

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11           The Honorable Richard A. Jones  
12           United States District Judge  
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